IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 155(S/S) 2007

Rajendra Diwedi S/o Govind Ballabh Diwedi,
Lecturer (Mathematics), G.I.C, Chaura Hawalbagh,
District Almora. ..... Petitioner.

Versus

1. State of Uttarakhand through Secretary School Education, Dehradun, District Dehradun.
2. Director, School Education, Uttarakhand, Dehradun,
3. Addl. Director of Education, Kumaon Region, Nainital,
4. District Inspector of Schools, Nainital,
5. Principal, G.I.C., Narayan Nagar, Kusumkhera, Haldwani, District Nainital,
6. Hemwati Nandan Dani. Lecuturer in Mathematics, G.I. C., Kusumkhera, Haldwani, (Nainital) .....Respondents.

Sri Rakesh Thapaliyal, learned counsel for the petitioner.
Sri N.P. Sah, learned Standing Counsel for State/respondents nos. 1 to 5.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rakesh Thapaliyal, learned counsel for the petitioner and Sri N.P. Sah, learned Standing Counsel for the State/respondents nos. 1 to 4.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. To issue a writ, order or direction in the nature of mandamus directing to the respondents to relieve Mr. Hemwati Nandan Dani from G.I.C., Kusumkhera Haldwani, District Nainital with immediate effect and in his place the petitioner may be permitted to join with immediate effect in G.I.C., Kusumkhera Haldwani District Nainital pursuant to the transfer order dated 30.11.2006,

ii. Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper on the basis of the facts and circumstances of the case,

iii. Award the costs of the petition to the petitioner.

The stand of the petitioner is that, after being selected by the Public Service Commission for the post of Lecturer (Mathematics), the petitioner was posted by the respondent as Lecturer (Maths) at G.I.C., Pithoragarh. Since, no student was available at Pithoragarh in Mathematics subject, the petitioner was directed by the Director of Education vide order dated 10.07.2006 to join at G.I.C. Chaura Hawalbagh District Almora. On 28.10.2006, the Addl. Director of Education, Kumaon division, Nainital passed an order transferring a number of Lecturers, including the respondent no. 6, by which the respondent no. 6 was transferred from G.I.C. Naikana Paisia, Almora to G.I.C., Kusumkhera, Haldwani, Nainital. On 2nd November 2006, the Director of Education cancelled all the transfers, which were made by the Addl. Direction of Education, Kumaon Division Nainital without prior approval of the Headquarter. The information in this regard was sent to all the District Education Officers on 02.11.2006 itself, and further the Principals were also communicated by a separate order passed on 03.11.2006. in spite of the order passed by the Director of Education, not to permit any person to join at their new place of posting who have been transferred without prior approval of the Headquarter, the respondent no. 5 i.e. the Principal G.I.C., Narayan Nagar, Kusumkhera, Haldwani has permitted the respondent no. 6 to join at G.I.C., Kusumkhera, Haldwani, on 04.11.2006.

Thereafter, on 30.11.2006, the Director of Education passed an order transferring the petitioner from G.I.C. Chaura Hawalbagh Almora to G.I.C., Kusumkhera, Haldwani, Nainital. In pursuance of this order, the petitioner approached to Principal, G.I.C., Kusumkhera, Haldwani seeking permission to join there, however, the petitioner has not been permitted to do so on the ground that respondent no. 6 has already joined on the post of Lecturer (Maths) in pursuance of the transfer order dated 28.10.2006.

Submission of the learned counsel for the petitioner is that the transfer order dated 28.10.2006 was passed without prior approval of the Headquarter and the same has been cancelled by the Director of Education, despite it, the petitioner has not been permitted to join at G.I.C., Kusmkhera, Haldwani.

It is the matter of great concern that the Addl. Director of Education, Kumaon Division, Nainital while transferring 14 Teachers from one place to another has specifically mentioned that the transfers shall be made effective only if the post is vacant at the new place of posting. Similarly the Director of Education while transferring the petitioner from G.I.C., Chaura Hawalbagh, Almora to G.I.C., Kusmkhera Haldwani has also mentioned that this transfer order shall be made effective, only if there is vacancy at the place where the petitioner is being transferred. This Court has never come across to such type of transfer orders in which the transfer has been made mentioning therein that the same shall be made effective only, incase, the post is vacant on the transferred place. It is common sense that a person can be transferred to another place only after ascertaining that there is vacancy at the particular place.

In the circumstance, I deem it fit and proper to direct the Director of Education Uttarakhand to pass appropriate orders in respect of posting of the petitioner within a period of three weeks from the date of production of a certified copy of this order.

With these directions, the writ petition is finally disposed of . No order as to cost.

(M.M. Ghildiyal, J.)

March 13, 2007:
NCM: